

CALIFORNIA COASTAL COMMISSION

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REVISED STAFF RECOMMENDATION**ON CONSISTENCY DETERMINATION**

Consistency Determination No. **CD-083-05**
Staff: MPD-SF
File Date: 7/11/2005
60th Day: 9/9/2005
75th Day: 9/24/2005
Commission Meeting: 9/14/2005

FEDERAL AGENCY: U.S. Forest Service

PROJECT**LOCATION:**

Brazil Ranch, Los Padres National Forest, Big Sur, Monterey County (Exhibits 1-3)

PROJECT**DESCRIPTION:**

General Consistency Determination for Forest Service-authorized special events at Brazil Ranch

SUBSTANTIVE FILE**DOCUMENTS:**

See page 35.

Staff Note: Since this matter was postponed from the August Commission meeting, the staff has received a number of letters commenting both in opposition to and in support of the Forest Service's proposal. These were mailed to the Commissioners in the two mailing packets for the September Commission meeting. The primary contentions in opposition, as of the date of this writing, are as follows:

1. The Big Sur portion of Monterey County's Local Coastal Program (LCP), which was incorporated into the CCMP in 1990, not the Coastal Act, should be the legal standard of review for federal agency activities. The Commission relied heavily on the LCP in previous Forest Service consistency determinations (including CD-18-88 and CD-47-93).
2. The LCP's Watershed and Scenic Conservation (WSC) zoning designation for the site does not allow commercial activities, and the Commission is applying a "double

standard” if it authorizes the Forest Service to perform events that private landowners with similar zoning designations are prohibited from performing. Concurrence would weaken the integrity and credibility of the LCP.

3. Private landowners have been threatened with sanctions for performing similar activities.
4. The Forest Service is competing with and taking away business from the private sector.
5. Uses during pre-federal ownership times were not as intense as those proposed by the Forest Service.
6. Any prior similar uses on the ranch in pre-federal ownership times does not make such uses legal.
7. If the Forest Service wishes to have special events, it needs an LCP amendment to change the site’s zoning.
8. The use of a general consistency determination for activities which individually affect coastal resources is improper. Each event should require a separate consistency determination.
9. While the Land Use Plan (Section 5.3.1.2) allows “rustic inns, etc.” in WSC zones, the zoning/implementation phase of the LCP does not allow such uses in WSC zones.
10. Trailhead parking as recommended by the Commission staff would be inconsistent with the LCP’s critical viewshed policy.
11. Conversion of the ranch from agriculture to visitor serving uses would be inconsistent with the agricultural protection policies of the Coastal Act and the LCP.
12. The Forest Service’s plan does not spell out how shuttles will be used, and thus whether they will reduce traffic on Highway 1 or simply on the ranch itself. If they would shuttle patrons parking along Highway 1, that would create visual clutter.
13. An October 2003 Forest Service assessment determined the ranch’s sewage facilities were inadequate, not up to code, and unable to handle special events.
14. The federal consistency regulations prohibit the Forest Service from failing to comply with the Coastal Zone Management Act based on arguments that it lacks sufficient funding to be fully consistent.
15. The ranch is essentially being privatized. A few public hiking opportunities is not the “maximum public access” required under the Coastal Act.
16. Hiking is unsafe and inconsistent with protection of sensitive habitat, public safety, and fragile coastal resources. No public hiking should be allowed on the ranch.
17. Noise from buses, shuttles, cars and special events activities would violate the tranquility of the valley and clutter scenic views. Camping and fires would exacerbate these effects.
18. The southwest corner of the ranch contains an ESHA, according to a report by a UC Professor. No public use affecting this area should occur.

Although the Commission has historically and consistently acted on federal agency consistency determinations using Chapter 3 of the Coastal Act as the legal standard of review, with LCPs that have been incorporated into the California Coastal Management Program (CCMP) as guidance, the staff believes the Big Sur LCP represents the Commission’s interpretation of Chapter 3 as applied to the Big Sur area, and should not be taken lightly. In fact, the Big Sur LCP recognizes and speaks to the Forest Service’s critical role in the preservation of the

coastal resources in Big Sur, and the County's and Commission's intention to harmonize Forest Service activities with the policies of the LCP, due in no small part to the fact that the Forest Service is the largest landowner in Big Sur. Thus, the Big Sur Land Use Plan (see further excerpts, Exhibit 5) provides, in part:

1.1 OVERVIEW

As the primary component of a certified Local Coastal Program, it will provide development standards to guide the actions of all State and local agencies. Under the provisions of the Federal Coastal Zone Management Act, actions by all federal agencies must be submitted for review by the California Coastal Commission. The Coastal Commission will rely on the certified Big Sur Coast Land Use Plan for guidance when reviewing federal projects for consistency with the policies of the California Coastal Management Program.

1.3 PAST AND PRESENT PLANNING

The major features of the Plan are to:

- o Guide all future planning decisions for County and State agencies, and set direction for the U. S. Forest Service in its planning.*
- o Show the kinds, locations, and intensities of land uses allowed, therefore, serving as a basis of zoning and other implementing actions.*
- o Present policies concerning land development and environmental protection and management.*
- o Call for management of Highway 1 and all other governmental activities on the Coast.*
- o Set forth detailed review procedures for all applications based on a permit review process.*
- o Set forth a system for coordinating the actions of all involved government agencies.*
- o Provide an environmental resource management data base to support the plan and future planning decisions and provide for the periodic updating of this information.*

2.1 PHILOSOPHY AND GOALS

4. Land Use and Development

The County's primary land use planning objective is to minimize development of the Big Sur coast in order to preserve the coast as a scenic rural area where residents' individual lifestyles can flourish, traditional ranching uses can continue, and the public can come to enjoy nature and find refuge from the pace of urban life.

The County's basic policy is that future land use development on the Big Sur coast shall be extremely limited, in keeping with the larger goal of preserving the Coast as a natural scenic area. In all cases, new land uses must remain subordinate to the character and grandeur of the Big Sur coast. All proposed uses, whether public or private, must meet the same exacting environmental standards and must not degrade the Big Sur landscape.

3.2.5 Exceptions to the Key Policy

A. Rural Service Centers

Development within the following Rural Community Centers--Big Sur Valley, Lucia, Gorda, and Pacific Valley, as well as at Rocky Point Restaurant, Big Sur Inn, and Coast Gallery - provide essential services to the community and visiting public, and shall be permitted under careful design and siting controls as provided for in the County Zoning Ordinance (Title 20 of the County Code) and by Policy 5.4.3 of this Plan.

B. Essential Ranching Structures

Essential agricultural structures required by commercial ranching and agriculture operations that cannot be feasibly located outside the viewshed shall be permitted under careful design and siting controls. Examples include barns, fences, windmills, water pumps, water tanks, stockponds and corrals. However, all aquaculture facilities will be subject to the same resource protection criteria and environmental standards as other development. Such uses shall conform to all non-critical viewshed standards.

3.3 ENVIRONMENTALLY SENSITIVE HABITATS

5. Public access in areas of environmentally sensitive habitats shall be limited to low-intensity recreational, scientific, or educational uses. Access shall generally be controlled and confined to the designated trails and paths. No access shall be approved which results in significant disruption of the habitat.

3.8 MINERAL RESOURCES

The following policies are applicable in any review by the County of development activities, on non-federal land. To the extent permissible under federal Supremacy

principles and federal mining laws, the same policies will also apply to federal lands. These policies are adopted pursuant to the California Coastal Act of 1976, and the County's general plan power and police power. All lands within the "National Forest" land use designation (see Figure 1) which are subject to coastal development permit jurisdiction are subject to the land use policies for the Watershed and Scenic Conservation land use designation.

5.3.1 Land Use Categories

Eight broad categories of land use are proposed for the Big Sur coast that reflect existing and traditional land uses and the priorities of the California Coastal Act. In all categories agricultural land use is a principal permitted use as provided for in Section 3.6 of this Plan.

1. National Forest

The U. S. Forest Service manages the Los Padres National Forest under a multiple use concept in which conservation of plant and wildlife communities, protection of watersheds, maintenance of scenic beauty, and low intensity recreation are principal land use activities. Forestry, mineral extraction and grazing can also be practiced under careful controls. Land uses permitted in the Ventana Wilderness portion of the National Forest are limited to backcountry recreation.

Non-federal development within this designation will be subject to the same development standards and criteria as Watershed and Scenic Conservation category. Existing administrative and community uses may continue to operate on National Forestland (e.g. Caltrans maintenance stations, local fire suppression facilities, Pacific Valley School).

2. Watershed and Scenic Conservation

Protection of watersheds, streams, plant communities, and scenic values is the primary objective. Principal uses in this category include agriculture/grazing and supporting ranch houses and related ranch buildings. Recreational facilities permitted in the Outdoor Recreation category including rustic inn or lodging units, hostels; forestry, mineral extraction, aquaculture and related facilities; and rural residential and employee housing associated with any of these uses are secondary, conditional uses that will be considered on their individual merits. Where on-site dining facilities are allowed for the inn units, they must be limited to that which is needed to serve on-premises overnight guests.

The following criteria shall apply to rustic inns, lodging units, hostels and employee housing: suitability for recreational uses of the parcel (5.4.3.C-1); ability to avoid adverse impacts on adjacent habitats and agricultural activities (5.4.2.1 and 3); adequacy of access (5.4.3.D-9) and water supply (3.4.1 and 5.4.3.N-1); and ability of a proposed

visitor-serving facility to support or assure the long term provision of open space and agricultural uses (5.4.3.C-6).

5.3.2 Land Use Map and Summary of Land Use Proposals

The Watershed and Scenic Conservation category permits a number of land uses including ranches, rural residences, low intensity recreation, rustic visitor accommodations, and under careful controls, forestry, mining, and aquaculture. The development and resource policies of the plan will guide landowners in assuring that development is compatible with protection of the area. At the same time, the flexibility that this category permits provides an opportunity for landowners to obtain a reasonable return from the land. ...

A special land use classification, called Rural Community Center, is depicted by a dotted line circumscribing portions of the Big Sur Valley, Pacific Valley, Lucia, and Gorda. This is intended to illustrate the approximate areas within which a variety of land use activities are now carried on. The plan proposes that these areas continue to provide a spectrum of functions for both the visiting public and for residents of the adjoining rural areas. Major categories of land use activities appropriate are those found in the Outdoor Recreation; and Recreational, Visitor-Serving Commercial, Public and Quasi-Public classifications. Residential development can take place in this category in the Big Sur Valley at 1 dwelling unit per existing vacant parcel or as employee housing although the limited available developable land urges that other more essential uses should have preference. In the portions of the Lucia, Gorda, and Pacific Valley areas delineated as Rural Community Centers, residential development should be avoided altogether, again, because of limited available land.

5.4 DEVELOPMENT POLICIES

5.4.3 Specific Policies

A. National Forest Lands

- 1. The County strongly supports continued management of the Ventana Wilderness in strict adherence to the provisions of the Wilderness Act.*
- 2. The County requests that the Forest Service give special attention in its planning and management of the Los Padres National Forest to the protection of the natural environment from recreational overuse and to the protection of adjacent residents from fire hazard and water pollution resulting from recreational use.*
- 3. The County will consult with the U.S. Forest Service prior to the issuance of a coastal development permit for any parcel adjacent to the National Forest lands, roads, or access trails.*

4. *The "National Forest" land use designation may include some lands not currently managed by the U.S. Forest Service. Non-federal development within the "National Forest" land use designation will be subject to the policies for "Watershed and Scenic Conservation". Lands added to Los Padres National Forest outside the certified "National Forest" designation will not be redesignated without Plan amendments.*

C. Development of New or Expanded Recreation Facilities

1. *Development of recreation and visitor-serving facilities at locations suitable for such use is preferred over other types of development in Big Sur because of Big Sur's national significance as a recreation area.*

2. *Maintenance of the rustic, outdoor recreational character of Big Sur is emphasized. The expansion and development of recreation and visitor-serving facilities in Big Sur shall be of a scale and nature that is compatible with the natural and cultural character of the area while offering opportunities for visitors to experience and enjoy the beauty and inspiration that the Big Sur environment presents. Intensive recreational uses or facilities are not appropriate and shall not be permitted.*

6. *Undeveloped areas in Big Sur shall be preserved for low intensity recreational use such as hiking and camping and nature study. Only minimal alterations of Big Sur's existing natural environment and recreational character shall be allowed. Development of low intensity recreation uses and visitor-serving facilities are encouraged on the larger properties where this will assist in providing economic uses of the land and in meeting Coastal Act objectives for public recreation.*

8. *Projects for new or extensively expanded recreation and visitor-serving facilities shall provide low-cost recreational facilities as part of the development. The establishment of low-cost hostels in Big Sur is encouraged as part of a comprehensive hostel system for the California coast.*

10. *The County requests that State and Federal agencies prepare long range recreational development plans for areas under their jurisdiction. The County requests that these plans contain traffic components describing the portion of Highway 1 capacity required to serve the proposed recreational development, including public transportation potential. The County will seek to assure that approval of these plans will be made jointly and on a cooperative basis, by all agencies involved in the management of Highway 1. Environmental assessments will be required for all such proposals. Development of public and private recreational facilities will be phased as part of a recreational growth management program based on available highway capacity. Development standards for approval of recreational facilities and visitor-serving facilities on government lands shall be identical to those applied to private developments in Big Sur.*

...

E. Commercial

1. Development of new commercial uses serving community and visitor needs be directed to the existing Rural Community Centers of the Big Sur Valley, Lucia, Gorda, and Pacific Valley. Several commercial uses including the Rocky Point Restaurant, Big Sur Inn, and Coast Gallery, are currently found outside the Rural Community Centers designated on the land use map and these are considered conforming uses under the plan. However, gasoline service stations, general stores, or similar highway-oriented commercial structures shall not be allowed outside of the rural community centers.

9. New commercial uses or expansion of existing uses will be evaluated for their impact on traffic safety and highway capacity in the area. Parking shall be screened from public views from Highway One and should in no event create hazards for motorists or pedestrians.

10. Commercial development which would enhance recreational use of public lands existing nearby by providing specific physical improvements (e.g. trail links, interpretive facilities) or management (e.g. ranger, fire control, contribution of funds to a public management agency), or development which includes specific improvements to public access to the shoreline and the surrounding lands shall be preferred.

6. PUBLIC ACCESS

6.1.2 Trails

Trails provide both recreational opportunities for the hiker, equestrian, and bicyclist, as well an alternative form of transportation to recreational areas. Public access to scenic and remote areas not served by roads can be obtained sometimes by trail. Most of the trails in Big Sur are located within Los Padres National Forest. The general policy of the Forest Service is to permit public access throughout the forest, and there is a network of maintained trails and backpacking camps. Some of the trails and dirt roads leading into the forest, cross private lands, and do not currently have full public right-of-way through these sections.

C. Providing and Managing Trails

6. The State Department of Parks and Recreation and the U. S. Forest Service are the primary agencies responsible for trail planning, construction, restoration, maintenance, management and liability. These agencies have a special responsibility to coordinate and assure continuity to and through State and Federal lands. The County's role will generally be confined to assisting in the provision of access easements, and in the review and guidance of plans related to trails construction and use management.

11. *The practice of opening private trails to organized groups on a reservation basis is encouraged in order to reduce conflicts between private and public use. Private trails can be opened to the public on a fee basis in conjunction with low intensity recreation facilities allowed on private lands. In some instances, private trails may be opened to the public through easements, provided maintenance by a public agency were assured. Management and easement arrangements should be pursued where the trail would be of public benefit.*

6.1.6 *Standards and Guidelines for Improvements to Accessways*

4. *Parking and Facilities - Emphasis should be given to improving access on the east side of Highway 1 suitable for parking near accessways or trailheads and, where feasible, pedestrian access to the west side of the highway shall be provided. Such areas should be effectively screened from the road through the location of site features, construction of berms, or planting of vegetation screens.*

The number of parking spaces provided should not exceed the capacity of the shoreline destination as determined by its size, sensitivity of the resources, and the type and intensity of use appropriate for the area.

Parking areas and turnouts should be designed and constructed in a manner which would not contribute to slope failure or excessive erosion, and would prevent runoff and degradation of water quality. Where feasible, porous surfacing materials which allow drainage should be used.

In areas where the public must cross traffic on a curve to reach a parking area, appropriate warning signs should be posted. Grade separations should be considered, where needed for safety and construction is feasible. If road width permits, consideration should be given to installation of left turn lanes into parking areas.

7. ADMINISTRATION AND IMPLEMENTATION

7.2.2 *Government Coordination and Local Participation Framework*

Because the U.S. Forest Service owns 75,000 acres in the Big Sur Coast Planning Unit--roughly one half the total area--and because the Federal Coastal Zone Management Act of 1972 excludes all lands subject to exclusive federal jurisdiction from the California coastal zone, special means should be developed to assure that the planning and management of these federal lands is coordinated effectively with the implementation of the Big Sur Coast Local Coastal Program. The memoranda of understanding and joint powers agreements, referred to above, are not likely to be a sufficient means to accomplish this coordination because the U. S. Forest Service's discretion is tightly circumscribed by federal statute. The County, therefore, requests its representatives in the United States Congress to explore the need for federal legislative authorizations and

mandates to the U. S. Forest Service to assure that its management and administration of Los Padres National Forest lands is effectively coordinated with the implementation of the Local Coastal Program on private lands and lands owned by the State and County.

The zoning portion of the Big Sur LCP provides further specificity as to appropriate and allowable uses within lands designated "WSC" (Watershed and Scenic Conservation). Section 20.145.140 of the zoning chapter (Exhibit 6) provides:

20.145.140 LAND USE AND DEVELOPMENT STANDARDS

B. Specific Development Standards

New or Expanded Recreation and Visitor-Serving Facilities

c. Development of visitor-serving inn or lodge units shall be allowed according to the following standards:

4) On parcels in a "WSC" (Watershed and Scenic Conservation) zoning district, the maximum allowable inn unit density shall be 2 units for each potential residential unit allowable on the parcel. A maximum of 8 units per parcel may be allowed. Where one or more parcels are in common ownership, the total units allowable on the parcels may be aggregated on a parcel, not to exceed 30 units per site. In order to determine the amount of potential residential units which may be converted to inn units, applications for inn or lodge units shall be subject to the standards and procedures outlined in Section 20.145.140.A.6 and A.7. The maximum allowable density thereby established shall be used as the amount of potential residential units allowable on the parcel.

(Ref. Policy 5.4.2.9)

Chapter 20.145.150 (Exhibit 7) of the zoning code provides further details regarding implementation of public access, based on the following-articulated statement of intent:

The intent of this Section is to provide development standards which will protect, encourage, and enhance the rights of access to the shoreline, public lands, and along the coast, and the opportunities for recreational hiking access.

Because preservation of the natural environment is the highest priority, all future access must be consistent with this objective. Care must be taken that while providing public access, the beauty of the coast, its tranquility and the health of its environment are not marred by public overuse or carelessness. The protection of visual access should be emphasized throughout Big Sur as an appropriate response to the needs of recreationists. Visual access shall be maintained by directing all future development out of the viewshed. The protection of private property rights must always be of concern.

(Ref. Policy 6.1.3)

Finally, Chapter 20.17 of the zoning code (Exhibit 8) further specifies allowable uses in WSC zones, as follows:

*Chapter 20.17 - REGULATIONS FOR WATERSHED AND SCENIC CONSERVATION
RESIDENTIAL ZONING DISTRICTS OR "WSC (CZ)" DISTRICTS*

20.17.010 PURPOSE.

The purpose of this chapter is to provide a district to allow development in the more remote or mountainous areas in the Coastal Zone while protecting the significant and substantial resources of those areas. Of specific concern are the highly sensitive resources inherent in such areas such as viewshed, watershed, plant and wildlife habitat, streams and riparian corridors. The purpose of this chapter is to be carried out by allowing only such development that can be achieved without adverse effect and which will be subordinate to the resources of the particular site and area.

*20.17.040 PRINCIPAL USES ALLOWED, COASTAL ADMINISTRATIVE PERMIT
REQUIRED IN EACH CASE. (Chapter 20.76) UNLESS EXEMPT (Section 20.70.120)*

- A. The first single family dwelling per legal lot of record;*
- B. Guesthouses meeting the development standards of Section 20.64.020;*
- C. The keeping of pets;*
- D. Rooming and boarding of not more than 2 persons;*
- E. Accessory structures and accessory uses to any principal use;*
- F. Temporary residences, pursuant to Section 20.64.070, used as living quarters during the construction of the first dwelling on a lot;*
- G. Cultivation, cutting and removal of Christmas trees;*
- H. Small family day care homes conducted within an existing structure;*
- I. Licensed residential care homes for aged persons or hospices of not more than 6 persons including any permitted rooming and boarding conducted within an existing structure;*
- J. Water system facilities including wells and storage tanks serving 14 or fewer service connections, pursuant to Title 15.04, Monterey County Code and replacement of water tanks and wells where no increase in service connections is created. The screening of any tanks and associated structures shall be approved by the Director of Planning and Building Inspection;*
- K. Animal husbandry and small livestock farming, provided that not more than 1 horse, mule, cow, or similar livestock shall be kept for each 20,000 square feet of land area;*
- L. All agricultural uses on a minimum of 10 acres including crop and tree farming, livestock farming, animal husbandry, apiaries, aviaries, except for those uses requiring a Coastal Administrative or Coastal Development Permit;*
- M. Home occupations, pursuant to Section 20.64.090;*

- N. Stands for the sale of agricultural products grown on the premises having no permanent electricity, plumbing or paving and where adequate restroom facilities exist on premises, subject to the approval of the Director of Environmental Health (ZA);*
- O. Crop farming, tree farming, viticulture and horticulture;*
- P. Intermittent livestock farming or animal husbandry such as "4-H" projects;*
- Q. Senior citizen units meeting the development standards of Section 20.64.010;*
- R. Farm employee housing facility for not more than two families or five single persons;*
- S. Second residential units not exceeding the zoning density of the property;*
- T. Reduction in setback requirements provided the proposed reduction is 10% or less of the required setbacks;*
- U. The use of mobilehomes for farm employee quarters;*

20.17.050 *CONDITIONAL USES ALLOWED, COASTAL DEVELOPMENT PERMIT REQUIRED IN EACH CASE. (Chapter 20.70) UNLESS EXEMPT (Section 20.70.120)*

- A. Additional residential units to a maximum of 4 on any lot, and not exceeding the zoning density of the property;*
- B. Public and quasi-public uses including churches, cemeteries, parks, playgrounds, schools, public safety facilities, schools, public utility facilities, but not including uses of a non-residential nature such as jails, rehabilitation centers, detention facilities, or corporation yards;*
- C. Commercial kennels (ZA);*
- D. Public stables on a minimum of 10 acres (ZA);*
- E. Legal nonconforming use of a portion of a structure extended throughout the structure (ZA);*
- F. Legal nonconforming use changed to a use of a similar or more restricted nature;*
- G. Bed and Breakfast facilities, pursuant to Section 20.64.100;*
- H. Commercial and noncommercial wind energy conversion systems;*
- I. Caretaker units meeting the development standard of Section 20.64.030;*
- J. Agricultural support services (ZA);*
- K. Farm worker housing facility;*
- L. Farm employee housing facility for more than two families or five single persons;*
- M. Keeping and raising of mink (ZA);*
- N. Water system facilities including wells and storage tanks serving 15 or more service connections;*
- O. Reserved;*
- P. Assemblages of people, such as carnivals, festivals, races and circuses not exceeding 10 days and not involving construction of permanent facilities (ZA);*
- Q. Accessory structures and uses prior to establishment of main use or structure (ZA);*
- R. Large family day care facilities (ZA);*
- S. Frog farms (ZA);*
- T. Commercial hog and turkey raising on a minimum of 10 acres (ZA);*
- U. Livestock feed yards on a minimum of 20 acres (ZA);*

- V. *Animal sales yards on a minimum of 10 acres (ZA);*
- W. *Dairies on a minimum of 40 acres (ZA);*
- X. *Animal hospitals (ZA);*
- Y. *Poultry farms on a minimum of 5 acres (ZA);*
- Z. *Riding and roping arena operations on a minimum of 10 acres (ZA);*
- AA. *Zoos or zoological gardens for the purpose of raising, maintaining, keeping or exhibiting any wild animal;*
- BB. *Stands for the sale of agricultural products grown on the premises having permanent electricity, plumbing or paving;*
- CC. *Cottage industries, pursuant to Section 20.64.095 (ZA);*
- DD. *Reserved;*
- EE. *Creation or use of Transfer Development Credits pursuant to Chapter 20.64.90 of this Ordinance (Big Sur only);*
- FF. *Conditional Certificates of Compliance;*
- GG. *Detached structures accessory to any conditional use;*
- HH. *Other residential or agricultural uses of a similar nature, intensity and density as those listed in this Section determined by the Planning Commission to be consistent and compatible with this Chapter and the applicable land use plan;*
- II. *Subdivisions;*
- JJ. *Lot Line Adjustments.*

The Commission staff believes the Forest Service's proposal is in keeping with the spirit and letter of the above Big Sur LCP policies and zoning restrictions. The Commission staff also believes no "double standard" is being applied; if private landowners seek commercial uses, the County requires them to apply for permits. The Forest Service has submitted this consistency determination, which is, for all intents and purposes, the federal agency equivalence of a coastal development permit. Part of the point of this consistency review is to define limits within the Forest Service will operate, as well as to provide a vehicle for continued reporting and monitoring of the Forest Service's activities at Brazil Ranch. If the Forest Service does not operate within these limits, either individual consistency determinations would need to be submitted, or the Commission could invoke the "reopener clause" of the federal consistency regulations.¹ Clearly, some level of commercial and visitor serving uses is conditionally allowable under the WSC zoning designation. Although not necessarily a Coastal Act issue, the staff does not agree that the Forest Service would be "competing" with private landowners; as the Forest Service states, its activities would be predominantly day-use activities, would "remain subordinate to the grandeur of the Big Sur

¹ **15 CFR §930.45 Availability of mediation for previously reviewed activities.**

(a) Federal and State agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program.

(b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was: (1) Previously determined to be consistent to the maximum extent practicable with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the management program

coast,” and “Permit holders will be encouraged to meet their needs for lodging, food and other services from Big Sur and other area businesses.”

Concerning shuttles, the Forest Service states:

When shuttles are required, visitors will be shuttled from their hotels or other central location. Visitors will not be parking along Highway 1 and simply shuttled to the interior of the ranch. The intent is to minimize the number of vehicles traveling on Highway 1 and the driveway into the ranch.

Concerning sewage issues, the Forest Service states:

Portable toilets have been, and will continue to be, rented for groups as needed to ensure that the existing, functioning and approved septic systems are not overloaded. A determination as to the number of portable toilets to be rented is based on the number of individuals and the length of their visit. Sanitation and water systems are managed to meet state/county health standards. Existing septic systems are adequate for the caretaker's family and small groups. Relatedly, the water system is being modified to meet state/county health standards. The caretaker's family and visitors are now offered bottled water until the water deficiencies are corrected.

Moreover, the Forest Service proposes that these activities would be temporary, and the Forest Service maintains its commitment to work in good faith with the County, the community, the Commission staff, and other agencies in further planning for the appropriate level of public use of the facility, including a public access plan. Accordingly, with the staff's recommended conditions addressing interim, fairly limited (and to eventually be superceded by a long term plan) public access trail issues, the staff believes the activities would be consistent with both the Coastal Act and the guidance provided in the Local Coastal Program, and the staff recommendation therefore remains the same as the recommendation published in the previous report for this consistency determination.

EXECUTIVE SUMMARY

The U.S. Forest Service has submitted a general consistency determination for authorization of small-scale special use activities at the Brazil Ranch, south of Bixby Creek in Big Sur, Monterey County. Formerly privately owned (by Alan Funt), the Forest Service recently acquired and assumed management responsibilities for the ranch as part of the Los Padres National Forest. During its private ownership period, aside from farming activities the ranch was frequently used for private special events. The Forest Service wishes to continue to schedule special events, which it describes as “small-scale,” and “limited” in order to help generate fees for maintaining the ranch. Examples the Forest Service uses for such events are that they would include “the use of existing buildings or ranch areas for filming, business meetings and family gatherings” (e.g., weddings). The Forest Service states:

These individual special use authorizations will be limited in their scope and frequency, and carefully monitored to avoid any “spill-over” effects onto State Highway 1 or adjacent private properties. All activities will remain subordinate to the grandeur of the Big Sur coast.

The Forest Service’s proposal contains the following limitations for the events:

- Shuttle buses transportation for events of more than 40 people;
- No new building construction or expansion;
- Parking will use existing parking areas not visible from Highway 1;
- The number of authorizations will not exceed 20 events per year; and
- Up to 16 events may authorize up to 150 persons, while no more than four events may authorize up to 400 people.

The Forest Service has also committed to annual monitoring and reporting to the Commission staff to verify that the activities occur within these limits and are not generating adverse coastal zone impacts. Also, as has been the case in previously reviewed general consistency determinations, the consistency determination will expire five years. In this situation, the Forest Service indicates its long term goal is “... to reduce or eliminate special use authorizations as funding from educational activities grow sufficiently to cover the costs of operating the Brazil Ranch.”

The Commission agrees that the nature and scale of the activities proposed are compatible with Coastal Act goals of balancing public access in a manner balancing the factors discussed in Sections 30210 and 30214, and that recreation activities should, as stated by the Forest Service:

... be limited to low-intensity recreational, scientific, or educational uses, such as nature study and observation, education programs, nature photography or painting, and hiking. Recreation, including trail use, will be managed to: protect existing vegetation; protect wildlife habitat, wetlands or environmentally sensitive habitats; avoid or reduce visibility from a public road; minimize conflicts with adjacent land uses, protect local residents' privacy; and protect the public's interest in a quiet and scenic experience.

However the Commission is concerned that in deferring implementation of general public access amenities to a future date and review process, this balancing has been incomplete and ignores the requirements of Section 30213 of the Coastal Act that “Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.” Essentially, until such time as the Forest Service implements its future trail and public access planning and development, the general public is being deprived of use of the ranch, while those who can afford special events are able to enjoy the ranch. The Commission believes the Forest Service needs to commit, at this time, to an interim (but nevertheless specific) public access program, pending further planning for a long-term public access plan, and to also commit to a planning process that will assure long-term future access. In negotiations with the Commission staff, the Forest Service has responded to these concerns by agreeing to both a

short term interim, and a long term, public access program. The Forest Service's commitments are attached as Exhibit 4 and include commitments for:

- (a) providing guided hiking and tour opportunities from the established parking arena to the summit of Sierra Hill via the existing unpaved road along the eastern boundary of the ranch;

- (b) providing un-guided hiking opportunities (by August 9, 2005) for hiking along the coastal terrace west of State Highway 1;

- (c) commencing a planning process (beginning October 1, 2005, and including public involvement and an analysis of environmental effects) to evaluate long-term opportunities to provide managed but unescorted non-motorized trail access to the coastal terrace;

- (d) providing opportunities (beginning in the spring of 2006) for supervised but unguided hikes from the established parking arena on the Ranch to the summit of Sierra Hill via the existing unpaved road along the eastern boundary of the ranch;

- (e) commencing a planning process (beginning October 1, 2006, again including public involvement and an analysis of environmental effects) to evaluate long-term opportunities to provide managed but unescorted non-motorized trail access to the entire 1,200-acre ranch; and

- (f) annual reporting to not just include special events reporting but also progress made towards implementing the interim and long-term access goals.

While these agreements go a long way towards addressing the project's Coastal Act concerns, additional language is needed to bring the proposed program into full compliance with the public access and recreation policies of the Coastal Act. The necessary clarifications are:

(1) deciding where parking will occur for the interim coastal terrace access discussed in sub-paragraph (b) above; and (2) clarifying the number of days hiking would be available on the inland side of Highway 1 as discussed in sub-paragraph (d) above. The Commission staff and the Forest Service reached substantial agreement in negotiations but were unable to reach complete consensus prior to the mailing for the Commission packet for the September Commission meeting. The Commission staff and the Forest Service anticipate reaching final agreement on these points, and if so, the staff will prepare an addendum for the Commission meeting; failing that, Conditions 1 and 2 on page 23 will provide the necessary procedure to allow resolution of these points.

With the above Forest Service commitments, combined with the 2 conditions, the proposed project would be consistent with the public access and recreation policies (Sections 30210-30223) of the Coastal Act.

By limiting activities to existing structures, roads, and trails, the project is consistent with the marine resource, water quality, and environmentally sensitive habitat policies (Sections 30230, 30231, and 30240) of the Coastal Act.

The Commission notes that as provided in 15 CFR § 930.4(b), should the Forest Service not agree with the Commission's conditions of concurrence, then all parties shall treat this conditional concurrence as an objection.

STAFF SUMMARY AND RECOMMENDATION

I. Staff Note/Procedures. The Forest Service has submitted a general consistency determination for authorization of small-scale special use activities at the Brazil Ranch. The Forest Service is seeking Commission concurrence with general types of activities rather than a specific project. The Forest Service has made this consistency determination pursuant to Section 930.36(c) of the federal regulations implementing the Coastal Zone Management Act (15 C.F.R. Section 930.36[c]), which provides:

(c) General consistency determinations. In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when performed separately. A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities (see §930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it shall thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

A Commission concurrence with this consistency determination will allow the Forest Service to schedule and authorize special events consistent with this consistency determination without any further review by the Commission. The proposal:

...includes a commitment for continued coordination with the Coastal Commission, Monterey County, and area residents for activities at the Brazil Ranch, including:

- 1. Opportunities to monitor the effects of projects authorized by this general consistency determination,*
- 2. Annual reporting of activities conducted pursuant to this general consistency determination,*
- 3. A complete review in five years allowing the Commission to review the general consistency determination to determine if conditions have changed and to allow for an extension of this determination, and*
- 4. Where applicable, submittal of future consistency or negative determinations for specific activities.*

The Commission has previously concurred with three general consistency determinations for federal agency (in those cases, Navy) activities: CD-12-93, CD-70-98, and CD-93-93. CD-12-93 was a general Consistency Determination for periodic replacement and repair of piers and shoreline structures, at U.S. Navy bases in and around San Diego Bay; CD-70-98 was a five year extension of CD-12-93 for the same activities, and CD-93-93 was for a variety of routine

research activities offshore of Santa Barbara and Ventura Counties, including the Mugu Sea Range and the Santa Barbara Channel, generally between Point Conception and Point Mugu.

II. Project Description. The Forest Service is requesting Commission concurrence for a categories of activities at the Brazil Ranch, including small-scale commercial activities intended to help fund maintenance of the ranch. The primary management goals for the Brazil Ranch are to protect watersheds, scenic values, streams, plant communities, wildlife habitat, the marine environment, and cultural resources. The Forest Service's considers its primary management roles for the ranch to include:

1. Protecting watersheds, scenic values, streams, plant communities, wildlife habitat, the marine environment, and cultural resources.
2. Seeking opportunities to maintain historic agricultural practices, such as grazing, consistent with resource protection.
3. Identifying and protecting environmentally sensitive habitats against any significant disruption of habitat values.
4. Monitoring and preventing adverse influences that could result in irreversible or irretrievable commitment of resources.
5. Providing for managed public access (including for community activities) and recreational opportunities consistent with resource protection, public safety as well as the recognition of deed restrictions and the private property rights and concerns of adjacent landowners.
6. Providing public interpretive information, and educational initiatives, and research.

Secondary goals include "Managed public uses." Among the management roles, and the one generating the need for this general consistency determination, is the Forest Service's proposal to continue to allow special events, which the Forest Service's describes as:

Issuing individual small-scale special use authorizations only on a limited basis. Examples of permits include the use of existing buildings or ranch areas for filming, business meetings and family gatherings. Fees from these permits will be retained to maintain facilities at Brazil Ranch. These individual special use authorizations will be limited in their scope and frequency, and carefully monitored to avoid any "spill-over" effects onto State Highway 1 or adjacent private properties. All activities will remain subordinate to the grandeur of the Big Sur coast. Permit holders will be encouraged to meet their needs for lodging, food and other services from Big Sur and other area businesses.

The Forest Service does not at this time propose any "Intensive visitor-serving facilities and activities (such as visitor centers, campgrounds or picnic areas)" or any residential, commercial or industrial development (i.e., construction of new facilities), alteration of the size of any existing structure, or change to the physical appearance of any existing structure. Future activities at the ranch may include provision of non-motorized trail access to the coastal terrace or interconnect to other coastal trails (such as the California Coastal Trail). The Forest Service states future trails (other than those discussed in this

report described as interim access opportunities) would be become the subject of a separate detailed environmental analysis including public involvement and coordination with the Commission (and Monterey County). Future activities may also include maintenance of existing facilities and/or interior modifications of some existing buildings (e.g. to improve public access, provide accessibility for persons with disabilities, or to meet health and safety standards).

III. Background/History. Before it came into federal ownership, the Brazil Ranch was historically privately owned and used for a wide variety of special events in addition to ongoing ranch activities. The Forest Service states:

The Brazil Ranch is located immediately south of the Bixby Creek Bridge, approximately 12 miles south of Carmel. (See Location Map.) The ranch is bifurcated on the west by California Highway 1 and by the Old Coast Highway on the east. The ranch, with the historic Bixby Bridge in the foreground and Hurricane Point in the background, is arguably one of the most photographed locations of Big Sur. None of the existing ranch buildings are visible from these viewpoints.

The lands comprising today's Brazil Ranch were homesteaded in the mid-1800s, including a parcel settled by John Brazil. In time, several of these early homesteads were sold to the Brazil family, who eventually gained title to nine original homestead lots comprising 1,200 acres and known collectively as the Brazil Ranch. During this time, the ranch was actively managed for cattle and horses. A dairy also operated until 1898. The lands were later sold to Allen Funt, of Candid Camera fame. During his quarter-century of ownership, Mr. Funt constructed all of the existing buildings and operated a horse and cattle business on the property. The buildings are clustered in a central core area and include three residences, two barns, corrals and several small horse shelters. During this time, the Brazil Ranch was frequented by Allen Funt and his guests, as well as commercial horse and cattle operators, hay trucks, and horse and cattle trailers. The property was later sold by the Funt Estate to a real estate developer who had learned that the original homesteads remained recorded as nine separate tax lots which could potentially be developed. At this time, the Brazil Ranch was classified under the Watershed and Scenic Conservation land use category which could allow for residential development as well as rustic inns, lodging, hostels, and other visitor-serving facilities. During ownership by the developer, use of the ranch for social gatherings and business meetings increased substantially. For example, during the last year of ownership, records document the ranch was used for events on 360 of 365 days of the calendar year. Proposed for multiple unit residential development, Brazil Ranch was purchased by the conservation community and public funding in 2002 to protect scenic and other natural resource values, and provide for public use and recreational opportunities. Management responsibility was transferred to Los Padres National Forest.

IV. Forest Service Planning Background. The project is related to two other recently submitted (and concurred with) Forest Service Plans for Los Padres National Forest. The first was an update of an original 1988 management plan. On June 7, 1988, the Commission concurred with the U.S. Forest Service's consistency determination (CD-18-88) for its Management Plan for the Los Padres National Forest. In that decision, following typical Commission review of federal agency management plans, which are to some degree a conceptual (i.e., "phased") review, the Commission identified future projects that might arise from the plan that would trigger further Commission federal consistency review, as summarized below:

The management plan covered a five to ten year period, identifying long-range goals and objectives for the Los Padres National Forest. The plan also evaluated federal and private activities within the Forest for consistency with the plan's goals and objectives. The management plan included provisions for monitoring its effectiveness. Although the Commission found that the overall management plan was consistent to the maximum extent practicable with the CCMP, it found that specific projects not clearly spelled out in the general plan that might directly affect the coastal zone would need to be submitted to the Commission for further consistency review.

A significant issue raised by the plan was its provision for limestone mining within Big Sur, Monterey County. Specifically, the plan considered and allowed Granite Rock Company to mine its claims on Pico Blanco. Since the plan did not include details of the proposed mining operation, the Commission reviewed this activity in terms of its land-use implications. The Commission found that that activity has the potential to adversely affect access, recreation, visual, and habitat resources of the coastal zone and these effects had the potential to be inconsistent with the CCMP. Despite the potential inconsistencies, the Commission found in part, that the plan was consistent to the maximum extent practicable with the CCMP, because existing federal law prevented the plan's provisions for limestone mining from being fully consistent with the CCMP.

In addition, the Commission found that the proposed mining would require Forest Service approval of a Plan of Operation and that that approval would trigger a consistency certification. Finally, the Commission found that the proposed mining would also require a coastal development permit. The Commission also evaluated the Forest Management Plan's effect on scenic and visual resources, recreation and access, environmentally significant habitat areas, and agriculture. Although the plan provided for the protection and enhancement of these resources, the Commission identified several projects that could adversely affect the coastal zone. Since those projects would require additional consistency review, the Commission found that the plan was consistent to the maximum extent practicable with the CCMP.

The Commission staff has also recently concurred with two Forest Service negative determinations, one for inland oil and gas leasing, and the second for an updated overall management plan. In ND-58-05, the Commission staff agreed that the continuation of certain

oil and gas leases in Los Padres National Forest, located in inland areas ranging from 25 to 40 miles inland of the coastal zone, in Santa Barbara, Ventura, and Los Angeles Counties, would not affect the coastal zone and that the activities were similar to those authorized in the original management plan (CD-18-88). The Commission staff noted that the leases in question were located: (1) outside Big Sur where the Commission previously raised concerns (and in fact would not be in Monterey County at all); (2) far inland; (3) in areas of existing oil and gas development; (4) where downstream drainage would stop at inland dams and therefore do not have the potential to affect the coastal zone; and (5) for most (92%) of the leased areas (52,000 acres) would contain "No Surface Occupancy" restrictions, and for the remaining 8%, any subsequent development ultimately proposed would trigger: (a) environmental restrictions and procedures to assure that any wetlands, riparian or environmentally sensitive habitat resources in the affected areas would be protected (including the application of Best Management Practices); and (b) further Forest Service review and NEPA analysis. Also, the Commission retains the ability to review activities if they would affect the coastal zone. The Forest Service had removed from the areas originally being considered for leasing those portions of the National Forest that were near (and therefore where drilling could have had the potential to affect) the coastal zone.

In concurring with ND-081-05, the Commission staff agreed that the recently-updated Los Padres National Forest Land Management Plan for the Big Sur Coast was "the same as or similar to the originally-concurred-with plan (CD-18-88). The recent plan established long range direction for 10 to 15 years, specified standards and practices necessary to achieve that direction, and specified evaluation and monitoring requirements to ensure that the direction is being carried out effectively. As with the other plans mentioned above, the review was based on part on the continued coordination and agreement that individual activities may be subject to federal consistency review.

Finally, while concurring with ND-081-05, the Commission and the Forest Service agreed that, due to its greater level of specificity and potential for effects on coastal resources, one of the more specific proposals necessitating a consistency determination and a public hearing was the subject Brazil Ranch special events plan.

V. Federal Agency's Consistency Determination. The Forest Service has determined the activities described in the general consistency determination to be consistent to the maximum extent practicable with the California Coastal Management Program.

VI. Applicable Legal Authorities. The federal consistency regulations (15 CFR § 930.4) provide for conditional concurrences, as follows:

(a) Federal agencies, ... should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under Subpart C ... would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable Subpart . . . ; and

(2) The Federal agency (for Subpart C) ... shall modify the applicable plan [or] project proposal, ... pursuant to the State agency's conditions. The Federal agency ... shall immediately notify the State agency if the State agency's conditions are not acceptable; and

...

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.

VII. Staff Recommendation. The staff recommends that the Commission adopt the following motion:

MOTION:

I move that the Commission conditionally concur with general consistency determination CD-083-05 that the activities described in the general consistency determination, as conditioned, would be fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

STAFF RECOMMENDATION:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

RESOLUTION TO CONDITIONALLY CONCUR WITH CONSISTENCY DETERMINATION:

The Commission hereby **conditionally concurs** with general consistency determination CD-083-05 by the U.S. Forest Service on the grounds that the project would be consistent with the enforceable policies of the CCMP, provided the Forest Service agrees to modify the project consistent with the condition specified below, as provided for in 15 CFR §930.4.

Conditions:

1. Interim Parking Plan for Coastal Terrace Access. Prior to date of the first special event under this general consistency determination, the Forest Service will provide an interim parking plan, subject to the review and concurrence of the Executive Director, providing for suitable areas for parking, for general public access to the coastal terrace west of Highway 1, 365 days a year, dawn to dusk. This plan will clarify and/or modify the second sentence of the Forest Service's proposal on page 16, paragraph 3b. of the attached agreement (Exhibit 4), which now provides:

By August 9, 2005, the Forest Service will provide for un-guided hiking opportunities along the coastal terrace west of State Highway One, through posting of safety and route markers. Parking will occur on existing turnouts along the highway.

The revised parking plan will reflect the results of an on-site meeting between the Forest Service and the Coastal Commission staff, and will not include use of existing Highway 1 turnouts unless the Commission staff agrees that no alternative outside the Highway 1 viewshed is feasible.

2. Frequency of Hiking Opportunities to be provided on the inland portion of the Ranch. Prior to date of the first special event under this general consistency determination, the Forest Service will clarify, subject to the review and concurrence of the Executive Director, the agreement contained on page 16, paragraph 3e. of the attached agreement (Exhibit 4), which now provides:

Beginning in the spring of 2006, provide the opportunity for supervised but unguided hikes from the established parking arena to the summit of Sierra Hill via the existing unpaved road along the eastern boundary of the ranch.

This clarification will include consideration of other suitable trail alignments that provide access to and along the ridgeline of Sierra Hill. In addition, access shall be available to the public throughout the year, in the same manner as for other National Forest lands, except that the time, manner, and location of such access may be regulated to protect sensitive coastal resources. In no case shall the number of days per year be less than the total number of days that the Ranch is open for special event or other scheduled activities.

VIII. Findings and Declarations:

The Commission finds and declares as follows:

A. Public Access and Recreation. Sections 30210-30212 of the Coastal Act provide for maximum public access to the shoreline, consistent with, among other things, public safety needs and fragile habitat protection. These sections provide, in relevant part, that:

Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access , which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212(a). Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,....

In addition, Section 30213 indicates a preference for low-cost visitor facilities; Section 30213 provides:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Sections 30221 and 30223 further specify a preference for use of oceanfront and upland areas for recreational uses, and Section 30214 of the Coastal Act specifies that access shall be managed in a manner reflecting an appropriate and resource-protective balancing of various, sometimes competing, factors. These sections provide:

Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30214. (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

...

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

The Forest Service recognizes that one of its highest management priorities is provision of public access; however, other than the two trail access opportunities identified in this proposal, the Forest Services is proposing to defer provision of general public access amenities to a future date and review process. The Forest Service states:

Managed public access will be provided consistent with (1) public safety, (2) the protection of public rights, (3) the protection of private property rights, and (4) the protection of natural resources areas from overuse.

Public access along State Highway One and the Old Coast Highway will not be impinged. Access to the Brazil Ranch east of State Highway One will be scheduled to allow for public enjoyment while ensuring resources and adjacent private property rights are protected. Automobile access will primarily occur on the existing paved driveway from State Highway One. The existing unpaved access driveway from the Brazil Ranch to the Old Coast Highway will generally not be available for public use except for emergencies. Parking will occur in designated parking areas not visible from State Highway One. Opportunities to provide non-motorized trail access to the coastal terrace on the west side of State Highway 1, or to interconnect to other coastal trails (such as the California Coastal Trail), may be considered in the future, and would become the subject of a separate detailed environmental analysis including public involvement and coordination with the California Coastal Commission and the County of Monterey. Restrictive language in the deed for portions of the Brazil Ranch requires (a) public access and recreation, (b) wildlife habitat and resources protection, and (c) maintenance of open space.

No development is proposed nor will be authorized that could potentially interfere with access to the sea. This includes either physical development (e.g. alteration of the size of structures) or a change in the density or intensity of use of lands (e.g. activities). No trails or roads are proposed to provide access to the ocean waters from either State Highway One or the Old Coast Highway.

No public facilities are proposed. Existing facilities will be managed to ensure (a) coastal resources are protected, (b) any development as defined by a change in the density or intensity of use of lands will occur only for recreation and visitor-serving purposes, (c) potential adverse impacts on habitats and agricultural activities will be avoided, (d) water resources will be protected, and (e) recreational uses will be characterized by low intensity use (e.g. no visitor center, major campground, or other intensive recreational activities are proposed.

Public access will be regulated by time, place and manner to the Brazil Ranch east of State Highway One. This will provide for public enjoyment while ensuring resources and adjacent private property rights are protected. Open public access, common to management of National Forest System lands, will not be allowed east of State Highway One. In the future, unscheduled non-motorized trail access on the coastal bluff west of State Highway One for day hikes may occur if authorized through a separate detailed environmental analysis in coordination with the California Coastal Commission and the County of Monterey. Public access to the Old Coast Highway and to State Highway One will not be restricted. Speed limits for roads interior to the Brazil Ranch have been established to ensure public and wildlife safety, and avoid the potential for vehicle affects, such as noise, from reaching adjacent properties. The speed limit is 5 MPH near buildings and 25 MPH on all other roads. Community and educational access will be managed separately from access for special use authorizations. Community and educational access is characterized by private vehicles with families, car-pooling or individual drivers. Car-pooling will be encouraged. Activities of over 40 participants will require that traffic monitors be present. Parking will occur in designated parking areas within the ranch and not visible from State Highway One. For non-educational activities requiring a special use permit, shuttle bus service will be required for scheduled activities with more than 40 participants to avoid the potential for adverse “spillover” effects of vehicle access onto State Highway One.

The Forest Service also intends to continue to host educational and community activities, separately from other special use authorizations. The Forest Service states:

Examples of educational activities include school group visits; university research projects; nature photography, painting or writing workshops; meetings of conservation leaders to discuss local, national or international conservation issues; and presentations on exotic weed eradication, green-building methods, renewable energy sources or other conservation issues. Community activities include hosting community-related events such as the Big Sur Arts Initiative, the Big Sur Garden Tour, or meetings for volunteer organizations. Access to these sessions is characterized by private vehicles with families, car-pooling or individual drivers. Car-pooling for community and educational programs will be encouraged. Activities of over 40 participants will require that traffic monitors are present. Parking will occur in designated parking areas within the ranch and not visible from State Highway One. Foot-paths provide non-automobile circulation from the designated parking area to meeting locations.

Describing examples of past special use authorizations at the Ranch, the Forest Service states:

During the past year, special event permits have been issued for (1) commercial photography and film in cooperation with the Monterey Film Commission, such as photographs of new cars, lawn tractors and clothing, (2) business meetings inside the existing barn or house, and (3) one wedding celebration in the barn and adjacent lawn area. All of these activities occurred in and around existing facilities and were not visible to travelers along State Highway One. These activities were closely regulated and included a site monitor. Authorizations have been for day-use permitted activities, with the exception of occasional overnight use of an existing residence (e.g. a wedding couple stayed overnight while their guests stayed overnight and found other services in Big Sur and surrounding communities). Fees from these special uses were retained exclusively for maintenance of facilities at the Brazil Ranch. Use of facilities at the Brazil Ranch was intended to complement services offered in Big Sur and surrounding communities.

Finally, the Forest Service states:

The Forest Service may continue issuing special use authorizations on a limited basis. Each activity will be individually authorized by an appropriate permit and signed by the District Ranger. All authorizations will include an educational component regarding conservation, stewardship and sustainability, with a special focus on the Big Sur coast. The Forest Service will also work with permittees to hold “green events”. For example, visitors will be instructed in how to minimize energy and water use, bring unused food to local food-banks, and car pool to minimize the number of vehicles traveling to the site. Activities may include use of buildings, filming, business meetings and events such as weddings. Permits will have detailed requirements, including: limitations on the number of people and vehicles; parking; required site monitors; location of activities; limitations on after-dark lighting and amplified sound systems; and speed limits for interior roads to ensure public and wildlife safety and to avoid the potential for vehicle affects, such as noise, from reaching adjacent properties. (See attached example of permit requirements.) Shuttle vans or busses will be required for activities over 40 participants to avoid the potential for “spillover” effects of vehicle access from State Highway One. Authorized use will not be visible from State Highway One (i.e. not in the critical viewshed). Authorizations will be limited primarily to day use activities. Limited overnight use may be authorized only as an adjunct to day use activities (i.e. the Brazil Ranch will not be operated as a motel). The Forest Service has and will continue to encourage permittees to use local vendors for lodging, food and other services. Partnerships with local vendors will be sought. Monitoring in coordination with the California Coastal Commission and Monterey County will occur. While it is difficult to forecast use of this unique setting, the Forest Service will limit special use authorizations to no more than 20 events per year. Sixteen of these events may authorize up to 150 persons, while no more than four events may authorized up to 400 people. Even at the maximum capacity level, with required shuttle buses of 32

passengers each, the only off-site effect will be 14 shuttle buses making one round trip to the ranch. If monitoring indicates that these few larger events produce undesirable effects, future group size will be reduced.

No construction, reconstruction, demolition or alternation of the size of any structure is proposed. Interior modifications of some existing buildings to improve public access, accessibility for persons with disabilities, or health & safety are envisioned. For example, a storage area within the existing barn is under evaluation for conversion to a public meeting space. Providing permanent toilets inside the barn (in lieu of the current use of portable toilets) is under consideration, and would be matched to an approved septic system to meet health and safety requirements. Modifications to the existing drinking water system are under design in cooperation with the Monterey County Health Department to meet public health and safety requirements. A wheel-chair accessible ramp replaced steps into an existing log home. No removal or harvesting of major vegetation other than for agricultural purposes is proposed.

The Forest Service has entered into a partnership with the Big Sur Environmental Institute, a nonprofit public benefit corporation, to offer educational programs on issues related to environmental conservation, stewardship and sustainability at the Brazil Ranch. People depend on the natural environment for water, food, fuel, shelter, medicine, open space and beauty. Many environmental problems respect no borders and threaten the health, prosperity and even the national security of nations. Addressing these problems and achieving sustainable, socially responsible management of natural resources – locally, nationally, and globally - requires leaders to find new ways to establish and share connections between people and places. Brazil Ranch is the point of convergence for this discussion. Examples of conservation education activities have included workshops with the Jane Goodall Institute, Earth Systems Science and Policy of the California State University at Monterey Bay, Ventana Wilderness Society, Audubon Society, Sierra Club, Earthwatch, Monterey Bay National Marine Sanctuary, Monterey Peninsula Unified School District, Big Sur Ornithology Lab, Big Sur Arts Initiative, Camp SeaLab, Lyceum of Monterey County, Monterey Peninsula College, Service Learning Institute, University of California Santa Cruz, Berkeley and Santa Barbara campuses, and Ventana Wilderness Alliance. Similar programs are planned with many other organizations on conservation issues, sustainability and stewardship.

As described above, the Forest Service's proposal contains the following limitations for the events:

- Shuttle buses transportation for events of more than 40 people;
- No new building construction or expansion;
- Parking will use existing parking areas not visible from Highway 1;
- The number of authorizations will not exceed 20 events per year; and
- Up to 16 events may authorize up to 150 persons, while no more than four events may authorize up to 400 people.

The Commission agrees that the nature and scale of the activities proposed are limited sufficiently in scope as to not cause significant impacts on existing public access and recreation. Most important, special events will be supported with shuttle buses, to minimize impacts to Highway One. Thus, impacts to existing public access and recreation, for which use of Highway One is critical, will be minimized. The number of special events will also be limited to 20 events per year for a maximum of 100 events over the five year authorization period. The number of other events that may occur is unclear. Monitoring will also occur, with annual reports being provided to the Commission concerning any potential impacts to public access. Finally, the project is authorized for five years only. Any significant impacts that may be identified over this time period can be addressed at such time as the Forest Service may request to continue its use of the Brazil Ranch for special events and other non general public use activities.

Apart from assuring no adverse impacts to existing public access and recreation, the Coastal Act also requires the provision of maximum public access, consistent with public safety and the protection of, public rights, rights of private property owners, and natural resource areas from overuse natural resources. In addition, lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. With respect to providing general public access to the Brazil Ranch, the Forest Service has proposed two interim opportunities for general public trail use, as well as a future planning process to evaluate the public access and recreation opportunities on the Ranch. The Forest Service has stated that such future recreation activities should:

... be limited to low-intensity recreational, scientific, or educational uses, such as nature study and observation, education programs, nature photography or painting, and hiking. Recreation, including trail use, will be managed to: protect existing vegetation; protect wildlife habitat, wetlands or environmentally sensitive habitats; avoid or reduce visibility from a public road; minimize conflicts with adjacent land uses, protect local residents' privacy; and protect the public's interest in a quiet and scenic experience.

The Commission acknowledges the Forest Service proposal to provide limited interim public access to the Ranch as well as the commitment to a future planning process. Planning for public access is an important component for assuring that public access is maximized consistent with the other concerns that may be identified through the planning process, such as the need to avoid sensitive environmentally sensitive habitats. However the Commission is concerned that in deferring implementation of general public access amenities on the Ranch to a future date and review process, the requirements of the Coastal Act to provide maximum access, particularly those that appear reasonably feasible at this time, would not be met. In addition, it would ignore the requirements of Section 30213 of the Coastal Act that “Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.” Essentially, until such time as the Forest Service implements its future trail and public access planning and development, the general public is being deprived of use of the ranch, while those who can afford special events are able to enjoy the ranch. The Commission

believes the Forest Service needs to commit, at this time, to a temporary, limited public access program, pending further planning for a long-term public access plan, and to also commit to a process that will not only assure that the future planning will be completed, but that will also result in maximum public access to the Brazil Ranch consistent with the other qualifications provided for in the Coastal Act (public safety, protection of natural resources, etc.). In negotiations with the Commission staff, the Forest Service has responded to these concerns by agreeing to both a short term interim, and a long term, public access program. The Forest Service's commitments are attached as Exhibit 4 and include implementation of a comprehensive phased public access program that will increase visitor opportunities within the established management goals of the Brazil Ranch, and which will include public educational forums, conferences, hiking, and tours (as discussed on pages 1-2 of Exhibit 4). More specifically, in response to Commission staff requests for both long-term and interim unguided access, the agreement includes several immediate and near-term managed guided and unguided public access, while more difficult issues associated with providing other opportunities are addressed in long term planning (see pages 2-4, Exhibit 4), as follows:

Therefore, the Forest Service intends to pursue a comprehensive phased public access program that will increase visitor opportunities within the established management goals of the Brazil Ranch. Elements of a phased public access program will include:

3. Hiking and tours. *The planning and implementation process lends itself to a phased approach that can allow for some managed guided and un-guided public access to occur while more difficult issues associated with providing other opportunities are addressed. The Forest Service proposes the following:*

a. For 2005, continue providing guided hiking and tour opportunities from the established parking arena to the summit of Sierra Hill via the existing unpaved road along the eastern boundary of the ranch. The Forest Service will schedule several dates in addition to those already scheduled by various community organizations (which are also open to the public). Such a program is similar to the regularly scheduled guided tours at the nearby Point Sur Lighthouse provided by the volunteer Central Coast Lighthouse Keepers organization (<http://www.pointsur.org>). It should be noted that Point Sur Lighthouse State Historic Park is closed to the public except by guided tour.

b. By August 9, 2005, the Forest Service will provide for un-guided hiking opportunities along the coastal terrace west of State Highway One through posting of safety and route markers. Parking will occur on existing turnouts along the highway.

c. The hiking opportunities in b. will be available from dawn to dusk.

d. Beginning October 1, 2005 (FY06), the Forest Service will initiate a planning process (including public involvement and an analysis of environmental effects) to evaluate long-term opportunities to provide managed but unescorted non-motorized trail access to the coastal terrace. This analysis will include alternatives for parking both near the highway as well as within the interior of the ranch. It is our goal to complete this planning process within one year. The planning will acknowledge the work and prioritization that have already been accomplished through the local coastal program to identify two potential trail corridors through the Brazil Ranch (e.g. the Old Coast Highway and a trail alignment across Sierra Hill).²

e. Beginning in the spring of 2006, provide the opportunity for supervised but unguided hikes from the established parking arena to the summit of Sierra Hill via the existing unpaved road along the eastern boundary of the ranch.

f. Beginning October 1, 2006 (FY07), the Forest Service will initiate a planning process (including public involvement and an analysis of environmental effects) to evaluate long-term opportunities to provide managed but unescorted non-motorized trail access to the entire 1,200-acre ranch. The planning will not be limited to hiking but will also consider other low-intensity recreation opportunities.

g. These planning activities will be implemented in a manner that takes into account the need to regulate the time, place and manner of public access, including topographic characteristics, capacity of the site to sustain use, appropriateness of limiting public access based on fragility of natural resources and proximity to adjacent residential uses, and the need to protect the privacy of adjacent property owners.³

2. *Small-scale Special Events.* *The Forest Service plans to continue offering public access opportunities through a limited program of small-scale special use authorizations for meetings and family gatherings.*

3. *The Forest Service's annual reporting to the Commission will be expanded to include updates on interim and long-term planning for public access. If sufficient progress is not made, the Commission may invoke the "re-opener" provision of the federal consistency regulations (15 CFR Section 930.45)⁴*

²As identified in Figure 3, Trails Plan, Big Sur Coast Land Use Plan, as part of the Certified Local Coastal Program for Monterey County.

³ California Coastal Act Section 30214

⁴ §930.45 Availability of mediation for previously reviewed activities. – see footnote 1, p. 15

4. *The Forest Service will not use or rely on any previous statements made that "...the Ranch is to be managed as a Forest Service administrative site and not available for general, unescorted public use" as a reason to not plan and provide for public access by the general public. Also, the Forest Service will consider these agreements to supercede any general planning documents that may have implied that no unescorted public use on the Ranch would be provided.*

The provision of interim public access is an important component of the Forest Service's proposal supporting a finding of consistency with the public access policies of the Coastal Act. However, additional clarification and refinement is needed with respect to both the proposed access to the terrace, and the inland access. In particular, every effort should be made to provide interim public access parking at an inland location on the Ranch, out of the public viewshed. In addition, other trail alignments to provide access to and along the Sierra ridgeline should be considered. Also, unless there is some overriding concern with the protection of sensitive coastal resources, such as environmentally sensitive habitat, access to the ridgeline should be provided year round. In any case, it appears feasible and reasonable to provide public access to the interior of the Brazil Ranch at least as frequently as the Ranch would be open to private special events or other scheduled activities. Such access would coincide, for example, with those times when Forest Service personnel may be present anyway. Conditions 1 and 2 are necessary to assure maximum consistency with the public access requirements of the Coastal Act. Thus, with several minor clarifications and modifications, the Commission believes these commitments would bring the proposed program into compliance with the public access and recreation policies of the Coastal Act. The Commission staff and the Forest Service reached substantial agreement in negotiations but were unable to reach complete consensus prior to the mailing for the Commission packet for the September Commission meeting. The Commission staff and the Forest Service anticipate reaching final agreement on these points, and if so, the staff will prepare an addendum for the Commission meeting; failing that, Conditions 1 and 2 on page 23 will provide the necessary procedure to allow resolution of these points.

Finally, with respect to future planning for long term public access on the Ranch, the Commission anticipates that this planning will include an evaluation of not only trail access opportunities for the entire Ranch, but also other opportunities and/or support facilities such as picnicking sites, restroom facilities, interpretive signage, etc. In addition, the Forest Service should evaluate the feasibility and desirability of providing low intensity recreational camping at the Brazil Ranch. The Commission acknowledges the importance of comprehensive planning for longterm public access to the Ranch, including the importance of including various stakeholders in the process. It is important, though, that the starting point for such planning be a framework that presumes the provision of maximum public access, subject to the regulation of the time, manner and location of such public access to protect other coastal resources, public safety, and the privacy of adjacent property owners. Thus, comprehensive planning should result in the implementation of maximum and optimum public access opportunities on these newly acquired public lands. Significantly, the Forest Service has stated that the prior Forest Service designation of the site as an "administrative site" that does not provide for general public use will have no bearing on the public access planning for the site.

The Commission concludes that, if modified in accordance with the Commission's conditional concurrence, the proposed project would be consistent with the public access and recreation policies (Sections 30210-30223) of the Coastal Act.

B. Marine Resources and Environmentally Sensitive Habitat. The marine resource and environmentally sensitive habitat policies of the Coastal Act provide:

Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

As noted above, one of the Forest Service's missions is the protection of marine resources and sensitive habitat. The Forest Service states:

Activities at the ranch will be managed to avoid any adverse affect on marine resources. This will include management of activities within the watershed that may affect marine resources. Where appropriate, marine resources will be maintained, enhanced, or restored.

Activities will be managed to avoid septic runoff and deposition of sediment. Alteration of the shoreline will not be permitted. No recreation development or activities will be allowed near tidepools. No structures within the State Highway One viewshed are proposed. The coastline will remain undeveloped.

*Environmentally sensitive habitats shall be identified and all practical efforts will be made to maintain, restore, and if possible, enhance environmentally sensitive habitats. A resources inventory that will include identification of sensitive habitats has been initiated. A small area of coast buckwheat (*Eriogonum latifolium*), a known food for the endangered Smith's blue butterfly (*Euphilotes enoptes smithi*), has been identified and made off-limits to activities by fencing. Similar protection measure will be implemented if and when additional environmentally sensitive habitats are identified. Activities will be monitored to prevent irreversible or irretrievable commitment of resources.*

The activities authorized under this general consistency determination would be conducted in existing developed areas of the ranch and would not affect marine resources or environmentally sensitive habitat. No new buildings are proposed, and sensitive habitat will be fenced and off-limits. In addition, as discussed above the general consistency determination includes provisions for reporting to the Executive Director activities authorized under to this consistency determination prior to authorization of the project. Therefore, the Director can assure that the project remains consistent with this general consistency determination and monitor the effects of projects authorized by this process. Also, the general consistency determination is only valid for five years. This provision will prevent the general consistency determination from having long-term effects and will allow the Commission to review the general consistency determination at the end of five years to determine if conditions have changed. With these considerations, with respect to marine resources, water quality, and environmentally sensitive habitat concerns, the activities would be consistent with the requirements of Sections 30230, 30231, and 30240 to maintain, protect, and restore, where feasible, marine resources and environmentally sensitive habitat.

C. Visual Resources

Section 30251 of the Coastal Act requires that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and long the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

In addition, protection of the critical viewshed of the Big Sur Coast is a central policy and requirement of the Monterey County LCP.

As discussed, no new buildings are proposed by the Forest Service, and parking for proposed events would occur in existing parking areas outside of the critical viewshed. However, ongoing negotiations with the Forest Service may result in establishing interim parking in the critical viewshed for public access to the Coastal Terrace. Condition 1 requires the Forest Service to establish that other parking options to support this access, outside of the critical

viewshed, are not feasible, before any parking would be allowed in the viewshed. Thus, interim parking may not be established in the viewshed. If such parking were shown to be necessary, it would be temporary, until such time as the Forest Service Public Access planning was completed, which should allow for the establishment of permanent public access parking for the Ranch outside of the viewshed. Thus, the viewshed impacts contemplated by the current proposal, while hopefully avoided entirely pursuant to Condition 1, would be nonetheless temporary. If modified in accordance with the Commission's conditional concurrence, the proposed project would be consistent with Section 30251 of the Coastal Act.

IX. SUBSTANTIVE FILE DOCUMENTS:

1. Navy General Consistency Determinations CD-12-93, CD-70-98, and CD-93-93.
2. Forest Service Consistency Determination CD-18-88 and Negative Determinations ND-58-05 and ND-081-05.
3. Big Sur Coast Land Use Plan and Zoning/Implementation portions of certified Local Coastal Program for Monterey County.